



## Copyright Office

[Docket No. 2020-9]

### Sovereign Immunity Study: Announcement of Public Roundtables

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of public roundtables.

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**SUMMARY:** The U.S. Copyright Office is conducting a study to evaluate the degree to which copyright owners are experiencing infringement by state entities without adequate remedies under state law, as well as the extent to which such infringements appear to be based on intentional or reckless conduct. To aid its analysis, the Office is announcing public roundtables to provide the opportunity for members of the public to address the following topics: evidence of actual or threatened copyright infringement by states; state policies and practices for minimizing copyright infringement and addressing infringement claims; and alternative remedies under state law for copyright infringement.

**DATES:** The roundtables will be held on Friday, December 11, 2020. Attendees will be able to join the event online starting at approximately 8:30 a.m., and the event will run until approximately 5:00 p.m.

**ADDRESSES:** The Office will conduct the roundtables remotely using the Zoom videoconferencing platform. Requests to participate as a panelist in a roundtable session should be submitted by 11:59 p.m. Eastern Time on November 16, 2020 using the form available at <https://www.copyright.gov/policy/state-sovereign-immunity/hearing-request.html>. Any person who is unable to send a request via the website should contact the Office using the contact information below to make an alternative arrangement for submission of a request to participate. Additional information will be made available at <https://www.copyright.gov/policy/state-sovereign-immunity/roundtable>.

**FOR FURTHER INFORMATION CONTACT:** Kevin R. Amer, Deputy General Counsel, *kamer@copyright.gov*; Mark T. Gray, Attorney-Advisor, *mgray@copyright.gov*; or Jalyce E. Mangum, Attorney-Advisor, *jmang@copyright.gov*. They can be reached by telephone at 202-707-3000.

**SUPPLEMENTARY INFORMATION:** On June 3, 2020, the U.S. Copyright Office issued a notice of inquiry (“NOI”) commencing a policy study on state sovereign immunity from copyright infringement suits.<sup>1</sup> Congress has requested that the Office “research this issue to determine whether there is sufficient basis for federal legislation abrogating State sovereign immunity when States infringe copyrights.”<sup>2</sup> To assist Congress in making that assessment, the Office solicited public comment on several issues concerning the degree to which copyright owners face infringement from state actors today, whether such infringement is based on intentional or reckless conduct, and what remedies, if any, are available to copyright owners under state law. Initial comments were due on September 2, 2020, and reply comments and empirical studies were due on October 22, 2020. Information about the study, including the NOI and public comments, may be accessed on the Copyright Office website at <https://www.copyright.gov/policy/state-sovereign-immunity/>.

The Office is now announcing that it will hold roundtable discussions on December 11, 2020, to allow interested members of the public to discuss and provide additional information on the topics of the study. The roundtables will be held virtually over Zoom to allow maximum participation and avoid the need for participants to travel. Each roundtable session will cover a topic relevant to the study, as discussed below. Depending on the level of interest, the Office may hold multiple sessions on the same topic to accommodate a greater number of participants and provide additional time for discussion.

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<sup>1</sup> 85 FR 34252 (June 3, 2020).

<sup>2</sup> Letter from Sens. Thom Tillis & Patrick Leahy to Maria Strong, Acting Register of Copyrights, U.S. Copyright Office at 1 (Apr. 28, 2020), <https://www.copyright.gov/policy/state-sovereign-immunity/letter.pdf>.

Members of the public who seek to participate in a roundtable should complete and submit the form available on the Office website at <https://www.copyright.gov/policy/state-sovereign-immunity/hearing-request.html> no later than November 16, 2020. Shortly thereafter, the Office will notify participants of their selection and panel assignments. In order to accommodate the expected level of interest, the Office plans to assign no more than one representative per organization to each session.

The Office will post a tentative agenda for the roundtables on its website on or about December 4, 2020. The Office also will provide sign-up information for members of the public who wish to observe, but not participate in, one or more of the roundtable sessions. The sessions will be video recorded and transcribed, and copies of the recording and transcript will be made available on the Copyright Office website

### **Roundtable Subjects of Inquiry**

The roundtables will consist of sessions on the following topics: (1) evidence of actual or threatened copyright infringement by states; (2) state policies and practices for minimizing copyright infringement and addressing infringement claims; and (3) alternative remedies under state law for copyright infringement.

#### *Evidence of Actual or Threatened Copyright Infringement by States*

Congress has asked the Office to “study the extent to which copyright owners are experiencing infringements by state entities without adequate remedies under state law.”<sup>3</sup> To this end, the Office seeks evidence concerning actual or threatened copyright infringement by states, including both specific instances of infringing conduct and empirical information relating to broader trends. Relevant issues include, but are not limited to, the prevalence and outcomes of infringement suits brought against state actors; whether the frequency of infringement by states has changed over time and whether it is likely to increase or decrease in the future; and the extent to which state immunity affects

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<sup>3</sup> *Id.*

sales and licensing practices in transactions involving state entities. In addition, in light of the Supreme Court’s articulation of the standard of intent required to establish unconstitutional infringement,<sup>4</sup> the Office is particularly interested in information that would allow it to assess the extent to which state infringements have involved intentional or reckless conduct.

*State Policies and Practices for Minimizing Copyright Infringement and Addressing Infringement Claims*

The Office is interested in whether or to what extent states have adopted policies to address complaints of copyright infringement and/or to decrease the likelihood of inadvertent infringement by state employees and institutions. The Office is particularly interested in testimony by state officials about their own practices, but the Office also invites participation by organizations or individuals who have navigated the relevant processes or otherwise have experience with this topic.

*Alternative Remedies Under State Law for Copyright Infringement*

The Supreme Court’s decision in *Allen v. Cooper* requires Congress to consider whether states “fail[] to offer an adequate remedy for an infringement.”<sup>5</sup> The Office accordingly is interested in hearing from members of the public about what remedies states provide for infringement of copyright, as well as whether those remedies are adequate for enforcement purposes. The Office would be particularly interested in hearing from those who have asserted alternative state-law remedies in court and how such cases were resolved. Discussion of these issues should include consideration of the relationship of any state-law cause of action to the preemption provisions under section 301 of the Copyright Act.<sup>6</sup>

**Dated:** November 2, 2020.

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<sup>4</sup> See *Allen v. Cooper*, 140 S. Ct. 994, 1004 (2020).

<sup>5</sup> *Id.*

<sup>6</sup> 17 U.S.C. 301.

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**Regan A. Smith,**  
*General Counsel and*  
*Associate Register of Copyrights.*

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